Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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No. 85-311

In the Supreme Court of the United States

DENNIS EDWARD COLLIS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

SUPPLEMENTAL APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

I hereby certify that the foregoing is a true copy of the original on file in this Office.

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF
MICHIGAN

/s/ PATRICIA A. FUNNI
Deputy

UNITED STATES OF AMERICA,
Plaintiff

v.

DENNIS E. COLLIS,
Defendant

Criminal Action
No. 81-80317

MEMORANDUM OPINION AND ORDER

At a session of said Court held in the U.S. Courthouse in the City of Detroit, Michigan on December 27, 1983.

PRESENT: JULIAN ABELE COOK, JR.

HONORABLE JULIAN ABELE COOK, JR.
United States District Judge

The instant matter is before this Court on remand from the Sixth Circuit Court of Appeals. The Defendant, Dennis Edward Collis [Collis], having been charged with possession with intent to distribute a controlled substance, moved this Court to suppress the evidence that was seized at the time of his arrest. The contested evidence is cocaine which was found on June 4, 1981 during a warrantless search of a shoulder bag that Collis was carrying at the Detroit (Michigan) Metropolitan Airport.

The relevant facts of this case have been set forth in the Court of Appeals Opinion, decided and filed February 16, 1983 (Docket No. 82-1127), and in this Court's Opinion on an earlier Motion to Suppress, entered December 23, 1981.

The Court of Appeals has determined that the initial encounter between Collis and Drug Enforcement Agency [DEA] Special Agent Anderson [Anderson] was not a seizure and, thus, invoked no Fourth Amendment protections. This initial confrontation was the approach and questioning of Collis by Anderson outside of the airport on the date in question. This Court must now determine two other issues; namely (1) whether any of the subsequent interactions between Collis and the DEA on June 4, 1981 amounted to a seizure that would be violative of the Fourth Amendment, and (2) whether Collis abandoned his shoulder bag before it was searched by the DEA, thereby eliminating the necessity for a search warrant.

Collis submits that a seizure occurred within the meaning of the Fourth Amendment when he went to the baggage claim area with Agent Anderson. He supports this assertion by analogizing the instant matter to the facts in *United States v. Jefferson*, 650 F.2d 804 (65h Cir. 1981). In *Jefferson*, the Defendant was observed after getting off of a plane on the basis of a "tip" that had been received by the DEA. As he was about to exit the airport, a DEA agent approached Jefferson, identified himself and asked the Defendant and his female companion to

accompany him to the baggage claim office. Both of them, each of whom appeared to be nervous, accompanied him to the office. On these facts, the Court concluded:

> In this case, agent Markonni did not merely stop Jefferson to ask him a few questions; he stopped him and immediately after identifying himself as a DEA agent requested Jefferson to accompany him to the baggage claim office. In these circumstances, Jefferson could not reasonably believe that he was free to leave. This was a "seizure" within the meaning of the Fourth Amendment. *Id.* at 856.

In the instant case, Collis argues that an unlawful seizure was effected when he was requested to accompany Anderson to the baggage claim area. He asserts that Anderson's request came after some initial questioning, and after Anderson's tacit assertion of suspicion of the Defendant (to wit, indentifying himself as a 'Narcotics officer' and his refusal to answer Collis' question regarding why he had been approached.)

Further, Collis reasons that since he had initiated movement away from the baggage claim area, Anderson, during the request to return to the baggage area, asserted dominion over his activities. He contends that this dominion, together with the agent's "official presence," constituted a seizure for Fourth Amendment purposes. Collis says he did not want to accompany the agent back to the terminal but did so only because there was no other choice. Thus, Collis challenges any implication that his movement to the baggage claim area may have been voluntary.

Next Collins opines that the alleged "seizure" was improper since the DEA agent did not have reasonable suspicion to seize him. In this regard, he notes that this Court found the agent did not have reasonable suspicion to make the initial approach to him. Collis then contends that the subsequent events (after the initial approach and up to Anderson's request to accompany

him to the baggage claim area) did not create a sufficient factual basis upon which to establish a "reasonable suspicion" under the applicable law. Rather, Collis asserts, that his name on the credit card and airline tickets should have acted to allay, rather than support, any suspicions of the agent.

Finally, Collis concludes that the evidence in question should be suppressed even if this Court finds that he had not been seized. In support of this assertion, Collis represents that the warrantless search of his shoulder bag was improper since the bag had not been abandoned. He contends that the act of throwing the bag over the fence did not constitute a relinquishment of his property, but rather an effort by him to maintain his privacy interest. Thus, he concludes that there was no abandonment of his property interest and the warrantless search of the bag renders its contents inadmissible evidence.

In response, the Government asserts that Collis was not seized when he accompanied Anderson to the baggage claim area. The Government maintains that Collis voluntarily consented to accompany Anderson to the baggage claim area because a reasonable person, under the circumstances, would have known that he was free to go at that point. Further, the Government argues that, even if Collis was seized at this point, such seizure was justified by reasonable suspicion and, thus, not violative of the Fourth Amendment. In support of this assertion, the Government notes that Collis fits the DEA drug courier profile and that he was observed suspiciously establishing eye contact with an unidentified male in the airport.

Further, the Government asks that if it is determined that all the DEA's contacts with Collis were legal, this Court should then determine that Collis abandoned his should bag by throwing it over the fence at the airport. Thus, the Government seeks to justify their subsequent search of the bag and the use of its contents as evidence. The Government contends that, since there was an abandonment by Collis, he has no standing

to challenge the subsequent search of the bag. Further, the Government submits that, because Collis "took a positive step to divest himself of the shoulder bag when he was not under arrest and was with the agents voluntarily" (presumably the Government has reference to Collis' attempt to relinquish the bag to the unidentified other man), this act evidenced a relinquishment of any claim of a privacy interest. Moreover, the Government asserts that, with the bag in plain view after having been thrown over the fence and made easily accessible to the general public, it should be determined that Collis gave up his expectation of privacy and abandoned all interest in the bag by throwing it over the fence.

In addition to the two issues, to which reference has been previously made in this Opinion, there appear to be two additional issues which must also be resolved; to wit, whether a seizure was effected when the DEA agent refused to allow Collis to transfer his shoulder bag to an unidentifed man who claimed to have been Collis' friend and, if a seizure did occur, whether the act of the DEA agent was based upon reasonable suspicion.

This Court's analysis will begin with a brief review of Collis' Motion to Suppress. The Fourth Amendment prohibits an unreasonable search and seizure by law enforcement authorities. The Supreme Court has ruled in *Mapp v. Ohio*, 367 U.S. 643 (1961), that any evidence which is obtained by means of such an improper, unreasonable search, should not be allowed into evidence. Thus, if this Court finds that any improper search or seizure took place in the course of Collis' interaction with the DEA at the airport, it must suppress the evidence subsequently found in Collis' should bag since that evidence would be "tainted" by the preceding illegality, *Wong Sun v. United States*, 371 U.S. 471 (1963).

In *Terry v. Ohio*, 392 U.S. 1 (1967), the Supreme Court noted that there are two types of seizures. One is an arrest or an exchange between a private citizen and a law enforcement

officer which, for all practical purposes, amounts to an arrest. Such an arrest was found to be effective in *Florida v. Royer*, 32 Cr.L. Reporter 3095, where the police took the Defendant's airline ticket and indentification, told him that they thought he was carrying narcotics, seized his luggage without his consent, took him to a small isolated room and interrogated him with no one else present. Thus, the restraint and degree of intrusion of Royer was substantial.

The other type of seizure is the investigative stop, or what has been often termed a "Terry-stop." This type of seizure is a temporary detention for the purpose of questioning, which is limited to the purpose of the stop (e.g., in this instance, to verify or dispel suspicion that Royer was engaged in illegal drug traffic). The law enforcement interest involved must warrant the limited intrusion into the personal security of the detainee. Detention must be temporary and must last no longer than it is necessary to effecutate the purpose of the stop. The means used for the detention and the questioning must be the least intrusive, *Terry*.

In the instant cause, there is nothing in this record to indicate that Collis was formally or effectively arrested before he ran. Collis was neither deprived of any of his belongings nor was he confined, in any reasonable sense of the word, to the extent of being arrested. Thus, this Court must consider whether the DEA agent's initial request of Collis to accompany him to the baggage claim area, or the agents' actions in the baggage claim area constituted a "Terry-stop" seizure. In order to reach this conclusion, it is necessary to examine and evaluate those cases which are analogous to the instant cause.

In *United States v. Mendenhall*, 446 U.S. 544 (1980), the Defendant was observed after she got off of a plane in Detroit from Los Angeles. Since she appeared to fit the drug courier profile, DEA agents approached her as she was walking through the concourse. They identified themselves as agents

and asked for her identification and airline ticket. Although the airline ticket listed Annette Ford as the passenger, her driver's license bore the name Sylvia Mendenhall. DEA agents testified that the Defendant was unable to satisfactorily explain the discrepancy and became visibly nervous. The agents returned the Defendant's belongings and asked her if she would accompany them to the airport DEA office. She did so, although the record does not indicate whether a verbal response was given to the request. At the office, a body search was conducted and drugs were found. Defendant moved to suppress the evidence.

Though there was a plurality opinion in *Mendenhall*, only one issue was not agreed upon by a majority of the Court. The majority *did* agree that there was no seizure because Mendenhall voluntarily consented to go to the DEA office. In his Opinion, Justice Stewart noted that the Government evidence showed that Defendant (who did not testify at the hearing) was asked — not required — to accompany the officers to the DEA office. There were no overt threats or any show of force. The Defendant had been questioned only briefly and her ticket and identification had been returned prior to the agent's request. Moreover, the Court noted that, even though the Defendant was a twenty two year old black female with only an eleventh grade education, they could not find coercion under the circumstances.

In *Royer*, *supra*, the Supreme Court found that a seizure had occurred because the Defendant was asked to accompany the agent, who had retained possession of Royer's ticket and identification, to an office after being informed that the DEA believed that he was transporting drugs. The court concluded that, under those circumstances, the Defendant reasonably believed that he was not free to go. However, the Court noted that there is no seizure by merely asking a person if he will

answer a few questions in a public place. Moreover, the Court opined that such a situation is not converted into a seizure whenever an officer identifies himself as a DEA agent.

Collis argues that his case is analagous to *Jefferson*, *supra*. However, that case is distinguishable from the instant cause on several grounds. First, in *Jefferson*, the request to accompany DEA agents came almost immediately after the agent's first approach to Defendant. Secondly, the agent's request came after Defendant had been told that he was suspected of carrying narcotics. A request to accompany a DEA agent on the heels of such an accusation, without further explanation, could only lead one to believe that he was not free to leave even if there had been a desire to do so. Here, Collis attempts to argue that the very failure of the agent to accuse him of committing a criminal act amounts to a "tacit" accusation. However, Collis offers no objective evidence to support the notion that he had been accused. The mere fact that Anderson identified himself as a DEA agent does not create an "official presence" which would serve to bolster Collis' theory of a tacit accusation. As noted by the Supreme Court in *Royer*, a situation involving a private citizen and a law enforcement official is not automatically converted into a seizure when the officer asks a few questions and identifies himself as a DEA agent.

Anderson's intervening questions represent an important distinction between the instant cause and *Jefferson*. He asked Collis for some identification other than a credit card (to wit, a driver's license). In response, Collis said that his license was in his luggage which was in the baggage claim area. Thereafter, Anderson asked Collis to accompany him to the baggage claim area in order for the agent to see the driver's license. This situation is inapposite to *Jefferson* where the only reason proferred by the agent was his suspicion that the Defendant had committed a crime. While it is reasonable that one who has been suspected of a crime would believe that he was not

free to go, it is not reasonable for one who was merely asked for his driver's license, without more, to assume that he had been restrained.

As noted in *United States v. Tolbert*, 692 F.2d 1041 (1982), the Sixth Circuit adopted the standard, as set forth in Justice Stewart's *Mendenhall* opinion on what constitutes a seizure. Stewart wrote:

> We conclude that a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. In the absence of some such evidence, otherwise inoffensive contact between a member of the public and police cannot, as a matter of law, amount to a seizure of that person.

The Court of Appeals in the instant case (cited *supra*) expounded on this standard. At page 6 of the Opinion, the Court noted that there is no seizure unless some objective factor discloses that a reasonable person would have felt restrained.

Here, Collis cannot point to any objective factors that would lead a reasonable person to feel restrained. Collis' argument (to wit, that the failure of the DEA agent to explain the reasons for his questioning constituted a tacit accusation) is, standing alone, only a subjective conclusion. Moreover, there is no evidence of any threat, show of force, coerciveness or physical restraint which might objectively demonstrate a seizure. Although Collis testified that he *thought* that he had no

choice but to accompany Anderson, his opinion was not expressed and there was no inquiry as to its validity at the time of the request. Rather, the evidence before this Court supports the conclusion that the Defendant accompanied Anderson without any sign of resistance or indication that he did so involuntarily. Thus, what Collis may have thought of the request provides no objective evidence of a seizure at this point.

Furthermore, Collis' claim that, in the absence of Anderson's request, he may not have gone back to the baggage claim area, does not change this Court's conclusion that there is no evidence of a seizure of the Defendant by Anderson. Even assuming that Collis' assertion is correct, the changing of plans in order to accomodate a law enforcement officer, without more, does not constitute a seizure. Just as an average citizen "may well elect to stop and respond to inquiries of a law enforcement officer, compelled, perhaps, by a desire to assist the officer in the prevention of a crime or, . . . bound by a sense of common courtesy" (see Court of Appeals Opinion *United States v. Collis* at page 5), that individual may also willingly show a piece of common identification (such as a driver's license) to an officer. Thus, without any expression of unwillingness by Collis or any evidence of restraint by the agent, this court concludes that (1) Anderson did not seize Collis by requesting the Defendant to accompany him to the baggage claim area, and (2) Collis consented to move to the interior of the airport terminal.

On the other hand, there is some objective evidence that a seizure of Collis took place. At the baggage claim carousel, Collis was approached by an unidentified man to whom Collis had nodded earlier without further comment. The man attempted to take the subject shoulder bag and Collis apparently indicated a desire to let him have the bag. However, DEA Agent Demnick [Demnick], who had joined Anderson inside the terminal, retrieved the bag and immediately returned it to

Collis. At this point, Anderson, anticipating that Collis might attempt to leave the area, positioned himself between the Defendant and the terminal doors.

Once these events transpired, Collis was effectively seized for Fourth Amendment purposes. By refusing to allow the transfer of the contested bag to the unidentified man, Demnick asserted such a degree of dominion which indicated that Collis was not free to act as he chose. Demnick did not ask Collis to take the bag back. Rather, Demnick's actions indicated that Collis' only choice was to retain the bag. In this situation, there was an overt expession by Collis of a desire to act in one way and the forcing of another course of action upon him without giving him any choice or attaining his consent to such alternative course of action.

Anderson's actions in attempting to block Collis' exit path further buttress the conclusion that Collis was seized at this point. By this action, Anderson made an objective expression of an intent to forcibly deter Collis from engaging in a course of conduct (i.e., exiting) that he may well have desired to undertake. Thus, we must now determine if this seizure was improper under Fourth Amendment standards.

We first conclude that this seizure of Collis was not an arrest or an "effective arrest," such as was found by the Court in *Royer*. Rather, the seizure was of the investigative type which required only reasonable suspicion. Collis was not confined. He was not isolated for interrogation which would suggest an arrest. None of his belongings were taken from him as may be done in conjunction with an arrest. Rather, this was a temporary detention for questioning which was limited to the purpose of the stop. Specifically, while the agents made no indication that they would hold Collis indefinitely, their actions did indicate that he would be restrained from leaving until he provided them with the requested identification in order to confirm or dispel their suspicion of his involvement in criminal

activity. Thus, this Court determines that Collis was the subject of an investigative stop, and not an arrest.

In order to make a lawful investigative stop, a law enforcement officer must act upon reasonable suspicion, *Terry*, *supra*. Reasonable suspicion is defined as being "articulable reasons" and "founded suspicions," based on the totality of circumstances that a person has, or is about to, commit crime, see *Terry* and *Royer*, *supra*.

The *Mendenhall* Court expounded on the elements that are necessary for a proper investigative stop. The Court, in that case, found that the reasonableness of such stop turns on the public interest served, the nature and scope of the intrusion and the objective factors relied on by the officer in light of his knowlegdge and expertise, *Mendenhall* at 561. The public interest in the stop of Collis was an important one — the deterrence of trafficking of illicit narcotics. The intrusion on Collis' personal freedom was limited. In fact, it appears that the least intrusive means possible was used in the DEA's restraint of Collis. He was not physically held or bound. None of his possessions were taken. No gun or other weapon was pointed at or held over him in order to command restraint. Certainly, the degree of intrusion appears to have been reasonable under the circumstances. There were several objective factors that were relied upon by the agents to make the stop. First, Collis fit the drug courier profile. Yet, this alone is not a basis for "reasonable suspicion," *Reid v. Georgia*, 488 U.S. 439 (1980). After the initial "spotting" of Collis, Anderson observed him nod at, but not approach, an unidentified man. Anderson also noted that, although Collis had baggage claim tickets in his immediate possession, he by-passed the baggage claim counter. Collis disavowed any knowledge of the unidentified man who subsequently approached him and identified himself as a friend. Furthermore, Collis did make an effort to give his shoulder bag to this man whom he allegedly did not know.

These incidents provided the agents with a basis upon which to conclude that Collis had not told them the truth. See *United States v. Moore*, where positive knowledge that a detainee had lied was one factor which supported a finding of probable cause. All these factors, when combined together, constitute reasonable suspicion that would justify the stop of Collis by Anderson and Demnick. Thus, there was no Fourth Amendment violation in this investigative stop of Collis.

The final issue to be addressed by this Court is whether the warrantless search of Collis' bag after his arrest was proper under Fourth Amendment standards. It is well-established that a search of abandoned property does not violate the Fourth Amendment, see *United States v. Tolbert*, 692 F.2d 1041 (1982). As noted in *Tolbert*, the concept of abandoment in the Fourth Amendment context "depends not upon a property right in the invaded place but upon whether the person who claims the protection of the amendment has a legitimate expectation of privacy in the invaded place," *id.* at 1044. The *Tolbert* Court went on to note that there are two aspects of the legitimacy of this expectation which must be established. The first is whether the individual, by his conduct, exhibited an actual expectation of privacy. The second is whether the individual's subjective expectation of privacy is one that society is prepared to accept as justifiable.

In the instant case, Collis' actions did not display any expectation of privacy in the bag. As he ran out of the airport, Collis threw the bag over a fence and ran in another direction. The bag was not placed in some private place. It was thrown to a place which was in plain view and accessible to the general public. Collis did not attempt to stay with the bag. Rather, he ran away from it, evincing no desire to retain a privacy interest in the property.

The next question is whether Collis' subjective expectation is one that society is prepared to accept as reasonable. This

Court can only conclude that it is not. It is not reasonable for one to expect to retain a privacy interest in a bag which has been thrown over a fence by him to a spot which is out of his reach, in plain view and within easy access of the general public, from which he moves away. This situation is similar to that in *United States v. McLaughlin*, 525 F.2d 517 (9th Cir. 1975) where the Defendants threw a package containing marijuana out of their truck in the course of a high speed chase by the police. Despite the Defendants' claim that the subsequent search of that package violated their Fourth Amendment rights, the Court concluded that the package had been abandoned and, thus, no Fourth Amendment violation occurred.

Here, Collis abandoned his shoulder bag when he threw it over the airport fence. None of the agents' actions prior to Collis' flight were violative of the Fourth Amendment which would make the abandonment improperly forced or involuntary, see, for example, *United States v. Morin*, F.2d 765 (5th Cir. 1982). Thus, the search of Collis' bag was proper. Consequently, the contents may be admitted into evidence in the criminal prosecution of Collis. Therefore, Collis' Motion to Suppress is denied for the reasons heretofore stated in this Opinion.

SO ORDERED.

/s/ JULIAN ABELE COOK, JR.

JULIAN ABELE COOK, JR.
United States District Judge

Dated: December 27, 1983
Detroit, Michigan